

### **REMARKS**

In the Restriction Requirement mailed April 3, 2006, the Examiner has restricted the claims to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-16, 21-32, 39, and 40, drawn to nucleic acids, chips comprising such nucleic acids, and methods of using such nucleic acids, classified in class 435, subclass 6, for example.
- II. Claims 33-38 and 41, drawn to antibodies, chips comprising such antibodies, and methods of using such antibodies, classified in class 435, subclass 7.1.

Applicant elects, with traverse, Group I, claims 1-16, 21-32, 39 and 40. The Restriction Requirement is traversed on the basis that Restriction Requirements are optional in all cases (M.P.E.P. § 803). If the search and examination of an entire application can be made without serious burden, the Examiner must examine the application on the merits, even though it includes claims to distinct or independent inventions. M.P.E.P. § 803. Applicant submits that a search of all groups of claims would not be so burdensome as the Examiner alleges.

If the restriction requirement is maintained, Applicant reserves the right to reintroduce them in one or more Divisional or Continuation applications at a later date.

### ***Election of Species***

The Examiner has alleged that this application contains claims directed to different patentably distinct nucleic acid species.

Applicant elects, with traverse, nucleic acids SEQ ID NO:11, SEQ ID NO:12, SEQ ID NO:13, or SEQ ID NO:14.

Applicants also respectfully traverse the requirement for electing a species of natural agent and a species of an additional ingredient. As provided by the MPEP,

species may be related inventions and need not be subject to restriction. *See* MPEP § 806.04(b). In particular, where species are claimed under a common genus and are related, the question of restriction is determined by the practice applicable to election of species and the practice applicable to other types of restrictions. *See id.* Applicants also respectfully remind the Examiner that they are entitled to examination of a reasonable number of species, and that election of species is for the convenience of the Examiner in initiating the search.

Here, at least claims 1 and 2 are generic with regard to the nucleic acid species. These generic claims explicitly define how the claimed species are related (selectively hybridize to DNA from a bacteria of the family *Enterobacteriaceae*). The Examiner is reminded that M.P.E.P. § 803.02 states that “if the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case, the Examiner will not . . . require restriction. [S]hould no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended . . . to the extent necessary to determine patentability of the Markush-type claim.” (Emphasis added.)

Applicant requests reconsideration of the requirement for election of different species. If this request is denied, Applicant submits that additional species should be considered as required under M.P.E.P. § 803.02, if a prior art search of the elected species turns up no relevant prior art.

Applicant also reserves the right to file divisional application(s) on the non-elected claims and/or species.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (516) 795-6820 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

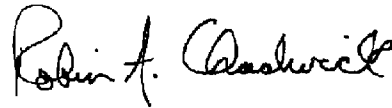
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Date April 27, 2006

By



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Date of Deposit: April 27, 2006

This paper or fee is being filed on the date indicated above using the USPTO's electronic filing system EFS-Web, and is addressed to: The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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